

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 794

Introduced by McGill, 26; Avery, 28; Flood, 19; Fulton, 29;
Heidemann, 1; Howard, 9; Kruse, 13; Pirsch, 4;
Rogert, 16; Stuthman, 22.

Read first time January 09, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend section
2 29-2203, Reissue Revised Statutes of Nebraska; to change
3 provisions relating to the responsibility of intoxicated
4 persons for criminal conduct and the defense of not
5 responsible by reason of insanity; and to repeal the
6 original section.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. A person who is in an intoxicated condition is
2 criminally responsible for his or her conduct and an intoxicated
3 condition is not a defense to any offense and may not be taken
4 into consideration in determining the existence of a mental state
5 which is an element of the offense unless the defendant proves by
6 clear and convincing evidence that he or she did not know that
7 it was an intoxicating substance when he or she consumed, smoked,
8 sniffed, injected, or otherwise ingested the substance causing the
9 condition.

10 Sec. 2. Section 29-2203, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 29-2203 (1) Any person prosecuted for an offense may
13 plead that he or she is not responsible by reason of insanity
14 at the time of the offense and in such case the burden shall
15 be upon the defendant to prove the defense of not responsible by
16 reason of insanity by a preponderance of the evidence. No evidence
17 offered by the defendant for the purpose of establishing his or her
18 insanity shall be admitted in the trial of the case unless notice
19 of intention to rely upon the insanity defense is given to the
20 county attorney and filed with the court not later than sixty days
21 before trial.

22 (2) Upon the filing of the notice the court, on motion
23 of the state, may order the defendant to be examined at a time and
24 place designated in the order, by one or more qualified experts,
25 appointed by the court, to inquire into the sanity or insanity of

1 the defendant at the time of the commission of the alleged offense.
2 The court may order that the examination be conducted at one of
3 the regional centers or at any appropriate facility. The presence
4 of counsel at the examination shall be within the discretion of
5 the court. The results of such examination shall be sent to the
6 court and to the prosecuting attorney. In misdemeanor or felony
7 cases, the defendant may request the court to order the prosecuting
8 attorney to permit the defendant to inspect and copy the results of
9 such examination pursuant to the procedures set forth in sections
10 29-1912 to 29-1921. In the interest of justice and good cause shown
11 the court may waive the requirements provided in this section.

12 (3) If the trier of fact acquits the defendant on the
13 grounds of insanity, the verdict shall reflect whether the trier
14 acquits him or her on that ground alone or on other grounds as
15 well. When the defendant is acquitted solely on the ground of
16 insanity, the court shall have exclusive jurisdiction over the
17 defendant for disposition consistent with the terms of this section
18 and sections 29-3701 to 29-3704.

19 (4) For purposes of this section, insanity does not
20 include any condition that was proximately caused by the voluntary
21 ingestion, inhalation, or injection of intoxicating liquor, any
22 drug or other mentally debilitating substance, or any combination
23 thereof, and any evidence of such voluntary ingestion, inhalation,
24 or injection for the purpose of proving the defense of not
25 responsible by reason of insanity is inadmissible.

1 (5) For purposes of this section, insanity does not
2 include any abnormality manifested only by repeated criminal or
3 other antisocial conduct.

4 Sec. 3. Original section 29-2203, Reissue Revised
5 Statutes of Nebraska, is repealed.